

ORDINANCE NO. 2022-25

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ADOPTING ZONING CODE AMENDMENT NO. CA2022-004 TO AMEND SECTIONS 20.18.030 (RESIDENTIAL ZONING DISTRICTS GENERAL DEVELOPMENT STANDARDS), 20.38.040 (NONCONFORMING STRUCTURES), AND 20.38.050 (NONCONFORMING USES) OF THE NEWPORT BEACH MUNICIPAL CODE TO CONFORM WITH STATE LAW AND CORRECT ERRORS RELATED TO SETBACKS (PA2022-076)

WHEREAS, Section 200 of the City of Newport Beach ("City") Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, Chapter 20.38 (Nonconforming Uses and Structures) of the Newport Beach Municipal Code ("NBMC") distinguishes between a nonconforming lot (e.g., a parcel that was legally subdivided, but does not meet current standards for the zone in which it is located), a nonconforming structure (e.g., a structure that was lawfully erected, but does not meet current development standards), and a nonconforming use (e.g., the use of a structure or land, which complied with the zoning code at the time of its establishment, but is no longer a permitted use);

WHEREAS, Section 20.38.050 (Nonconforming Uses) of the NBMC authorizes the alteration of nonconforming residential uses with more units than permitted to reduce the number of dwelling units, but does not clearly state the development rights associated with repair and maintenance, alterations, or expansions;

WHEREAS, redevelopment opportunities of nonconforming residential uses are now restricted under Senate Bill 330 and Senate Bill 8 which place limitations on the City's ability to disapprove a housing development that would result in a net loss of residential density through January 1, 2030;

WHEREAS, due to the ambiguity in Section 20.38.050 (Nonconforming Uses) of the NBMC, a code amendment is necessary to clarify that residential properties that are nonconforming due to density may be maintained, altered, or expanded subject to the limitations set forth in Section 20.38.040 (Nonconforming Structures);

WHEREAS, prior to the 2010 comprehensive update to Title 20 (Planning and Zoning) of the NBMC ("2010 Zoning Code Update"), the NBMC contained an overlay district known as B Overlay, which was redesignated as the R-1-6,000, R-1-7,200, R-1-10,000, R-2-6,000, and RM-6,000 zoning districts in the 2010 Zoning Code Update;

WHEREAS, previous versions of the NBMC authorized an addition to the principal structures located within the former B Overlay to the side yard setback in effect at the time the principal structure was constructed;

WHEREAS, the 2010 Zoning Code Update inadvertently omitted this provision, therefore, Zoning Code Amendment No. CA2022-004 is necessary to reinstate the omitted provision and unencumber these properties from the restrictions in Section 20.38.040 (Nonconforming Structures) of the NBMC;

WHEREAS, on May 10, 2022, the City Council adopted Resolution No. 2022-29 by a majority vote (6 ayes, 1 absent) initiating Zoning Code Amendment No. CA2022-004 related to nonconforming uses and structures;

WHEREAS, the Planning Commission held a public hearing on October 20, 2022 in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing;

WHEREAS, at the hearing, the Planning Commission adopted Resolution No. PC2022-026 by a majority vote (4 ayes, 3 abstentions) recommending to the City Council approval of Zoning Code Amendment No. CA2022-004; and

WHEREAS, the City Council held a public hearing on November 15, 2022 in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: The City Council finds amendments to Title 20 (Planning and Zoning) of the NBMC are legislative acts. Neither Title 20 nor State Planning Law set forth any required findings for either approval or denial of such amendments. Notwithstanding the foregoing, Zoning Code Amendment No. CA2022-004 is consistent with the Housing Crisis Act of 2019 and the Newport Beach General Plan.

- a. Zoning Code Amendment No. CA2022-004 is consistent with the Housing Crisis Act of 2019 as it will help extend the useable life of the City's existing housing stock, while avoiding the need to demolish dwelling units to redevelop certain properties.
- b. Zoning Code Amendment No. CA2022-004 is consistent with General Plan Policy LU6.2.1 (Residential Supply) as it will allow limited improvements to nonconforming residential uses, resulting in the maintenance and general improvement of the City's existing housing stock and supply.
- c. Zoning Code Amendment No. CA2022-004 is consistent with the Housing Policy 2.1, by encouraging the preservation of existing housing and provision of new housing affordable to extremely low-, very low- and moderate-income households. Allowing alterations to existing nonconforming units, rather than encouraging the demolition and new construction of units, preserves a portion of the City's existing housing stock that is generally more affordable.
- d. Zoning Code Amendment No. CA2022-004 is consistent with General Plan Policy LU 5.1.7 (Renovation and Replacement of Existing Residential Units) which requires, "residential units that are renovated and rebuilt in existing single-family neighborhoods adhere to the principles for new developments." Any modifications proposed as a result of Zoning Code Amendment No. CA2022-004 must, otherwise, conform with the development standards in effect at the time of the application. This includes floor area, lot coverage, height, and parking. Similarly, when a property owner wishes to rebuild a residence, the new dwelling must comply with the requirements in effect at the time of the application.

Section 2: The rows entitled "Side [Setbacks]" in Table 2-2 (Development Standards for Single-Unit Residential Zoning Districts) of Section 20.18.030 (Residential Zoning Districts General Development Standards) of the NBMC shall be amended to read as follows:

Development Feature	R-A	R-1	R-1-6,000	R-1-7,200	R-1-10,000	Additional Requirements
Side (interior, each):						
Lots 40 ft. wide or less	5 ft.	3 ft. (4)	6 ft. (7)	5 ft. (7)	10 ft. (7)	20.30.110 20.48.180 20.38.040 (H)
Lots wider than 40 ft.	5 ft.	4 ft.	6 ft. (7)	5 ft. (7)	10 ft. (7)	
Side (street side):						
Lots 40 ft. wide or less	5 ft.	3 ft.	6 ft. (7)	5 ft. (7)	10 ft. (7)	20.30.110 20.48.180 20.38.040 (H)
Lots wider than 40 ft.	5 ft.	4 ft.	6 ft. (7)	5 ft. (7)	10 ft. (7)	

Section 3: Footnote 7 of Table 2-2 (Development Standards for Single-Unit Residential Zoning Districts) of Section 20.18.030 (Residential Zoning Districts General Development Standards) of the NBMC shall be added to read as follows:

(7) An addition to the principal structure shall be allowed to be constructed to the side yard setback in effect at the time the principal structure was constructed provided the addition meets applicable building and fire code standards.

Section 4: The rows entitled "Side [Setbacks]" in Table 2-3 (Development Standards for Two-Unit and Multi-Unit Residential Zoning Districts) of Section 20.18.030 (Residential Zoning Districts General Development Standards) of the NBMC shall be amended to read as follows:

Development Feature	R-BI	R-2	R-2-6,000	Additional Requirements
Side (interior, each):				
Lots 40 ft. wide or less	3 ft.	3 ft.	6 ft. (10)	20.38.040 (H)
Lots 40'1" wide to 49'11" wide	4 ft.	4 ft.	6 ft. (10)	20.38.040 (H)
Lots 50 ft. wide and greater	N/A	4 ft.	6 ft. (10)	
Side (street side):				20.38.040 (H)
Lots 40 ft. wide or less	3 ft.	3 ft.	N/A	
Lots 40'1" wide to 49'11" wide	4 ft.	4 ft.	N/A	
Lots 50 ft. wide and greater	N/A	N/A	6 ft. (10)	

Development Feature	RM	RMD	RM-6,000	Additional Requirements
Side (interior, each):				
Lots 40 ft. wide or less	3 ft.	N/A	6 ft. (10)	20.38.040 (H)
Lots 40'1" wide to 49'11" wide	4 ft.	5 ft.	6 ft. (10)	
Lots 50 ft. wide and greater	8% of the average lot width (5)	N/A	6 ft. (10)	
Side (street side):				
Lots 40 ft. wide or less	3 ft.		N/A	20.38.040 (H)
Lots 40'1" wide to 49'11" wide	4 ft.	5 ft.	N/A	
Lots 50 ft. wide and greater	8% of the average lot width (5)		6 ft. (10)	

Section 5: Footnote 10 of Table 2-3 (Development Standards for Two-Unit and Multi-Unit Residential Zoning Districts) of Section 20.18.030 (Residential Zoning Districts General Development Standards) of the NBMC shall be added to read as follows:

(10) An addition to the principal structure shall be allowed to be constructed to the side yard setback in effect at the time the principal structure was constructed provided the addition meets applicable building and fire code standards.

Section 6: Section 20.38.040(H) (Exceptions) of the NBMC is amended to read as follows:

20.38.040 Nonconforming Structures.

H. Exceptions.

1. Corona del Mar and Balboa Village. Existing nonresidential structures within Corona del Mar and Balboa Village that are nonconforming because they exceed the allowed floor area shall be exempt from the limits of this section and may be demolished and reconstructed to their preexisting height and floor area; provided, that not less than the preexisting number of parking spaces is provided.
2. Landmark Structures. Landmark structures shall be exempt from the requirements of this chapter in compliance with Section 20.38.070 (Landmark Structures).
3. R-1-6,000, R-1-7,200, R-1-10,000, R-2-6,000, and RM-6,000 Zoning Districts. Existing principal structures within the R-1-6,000, R-1-7,200, R-1-10,000, R-2-6,000, and RM-6,000 Zoning Districts, previously designated within the B Overlay District, with nonconforming side yard setbacks only are exempt from the limits of this section.

Section 7: Section 20.38.050 (Nonconforming Uses) of the NBMC is amended to read as follows:

Nonconforming uses may be changed, expanded, increased, or intensified only as provided in this section.

A. Expansion and Intensification of Existing Nonconforming Uses.

1. **Nonresidential Zoning Districts.** In nonresidential zoning districts, and in areas where residential uses are not allowed in Planned Community Districts or specific plan districts, a use that was previously allowed by right, but which becomes nonconforming because of new permit regulations, may be expanded or intensified (e.g., increase in floor area, lot area, or occupancy load) subject to the approval of a conditional use permit.
 2. **Residential Zoning Districts.** A residential use that is nonconforming because it exceeds the allowed number of units for the zoning district may be altered subject to compliance with the provisions of Section 20.38.040 (Nonconforming Structures).
- B. **Change of Use.** A nonconforming nonresidential use may be changed to a conforming use, provided the change does not create or increase a deficiency in required off-street parking except as provided in Section 20.38.060 (Nonconforming Parking).
- C. **Exception for Landmark Structures.** The use of a landmark structure may be changed, expanded, increased, or intensified without obtaining a conditional use permit required by this section subject to compliance with the provisions of Section 20.38.070 (Landmark Structures).

Section 8: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 9: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 10: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Zoning Code Amendment No. CA2022-004 is also exempt pursuant to CEQA Guidelines Section 15061(b)(3), the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment.

Section 11: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 12: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 15th day of November, 2022, and adopted on the 29th day of November, 2022, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

KEVIN MULDOON, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY